

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
TONI EDMONDS,

Plaintiff,

-against-

ADA PEREZ,

Defendant.
-----x

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 9/25/08

08 Civ. 4388(PKC)

ORDER ADOPTING REPORT
AND RECOMMENDATION

P. KEVIN CASTEL, District Judge:


The petition for a writ of habeas corpus was referred to Magistrate Judge Andrew J. Peck for a report and recommendation. (Docket Entry # 3) On July 16, 2008, Magistrate Judge Peck issued a Report and Recommendation ("R&R") recommending that the petition be dismissed without prejudice for failure to exhaust and the application to stay her unexhausted claims be denied.

The R & R advised the parties that they had ten days from service of the R & R to file any objections, and warned that failure to timely file such objections would result in waiver of any right to object. As of the date of this Order, no objections have been filed and no request for an extension of time to object has been made. The R & R expressly called petitioner's attention to Rule 72(b), Fed. R. Civ. P., and 28 U.S.C. § 636(b)(1). Plaintiff received clear notice of the consequences of the failure to object and has waived the right to object to the R & R or obtain appellate review. See Frank v. Johnson, 968 F.2d 298, 300 (2d Cir.1992). No circumstances are presented which would cause this Court to depart from that rule in the interest of justice. Id.

The R&R is adopted in its entirety and the petition is DISMISSED WITHOUT PREJUDICE.¹

Petitioner has not made a substantial showing of the denial of a constitutional right and, accordingly, a certificate of appealability will not issue. 28 U.S.C. § 2253. The Court certifies that any appeal from this order would not be taken in good faith. 28 U.S.C. § 1915(a)(3).

SO ORDERED.



P. Kevin Castel
United States District Judge

Dated: New York, New York
September 25, 2008

¹ A dismissal without prejudice for failure to exhaust does not subject a timely filed subsequent petition subject to the “second or successive” petition provisions of 28 U.S.C. § 2244. Slack v. McDaniel, 529 U.S. 473 (2000).